YALE LAW JOURNAL

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AN Act of the Legislature of Utah, approved March 10, 1892, provided that "In all civil cases a verdict may be rendered on the concurrence therein of nine or more members of the jury," and although sustained by the trial and Supreme courts of the Territory, the opinion of the United States Supreme Court, rendered recently by Mr. Justice Brewer in the case of The American Publishing Company *v.* A. Fisher and Aaron Keyser, has held the Act to be unconstitutional. The principle which arose in that case was the important but well established one as to the extension of the United States laws over the Territories of the United States and the consequent right to trial by jury as that right existed at common law. The power of a State as distinguished from a Territory to abridge or amend the right to jury trial had been decided before and was not touched upon in the opinion.

This decision renews interest in the discussion of the better adaptation of the jury system to the present conditions and requirements of our society and emphasizes the need of a suggested change which has recently been much debated. The origin and growth of the jury is perhaps better suited for an academic than a practical discussion and yet to many the present rule of unanimity in civil cases seems so at variance with our other institutions and customs that they are driven to the supposition that it grew up and developed under conditions and circumstances other than our own. The duty of the juror, it is said, has changed from the giving to the weighing of evidence

and yet this rule has been preserved in spite of the change. A majority controls in other cases, the most important affairs of nations are determined by majority votes and it is asked why a different rule should be applied to civilians in their relations with one another. Indeed, the question does not seem an idle one when it is remembered that unanimity is not required to determine law although the correctness of law is perhaps even more important than the correct finding of facts, for to the law other facts are applied. Under our present system, moreover, five Justices of the United States Supreme Court may overrule four of their associates who agree with three additional judges in the court below and yet the law, thus decided by a minority of five to seven of those who passed upon it, is considered sufficiently certain and settled. Indeed, if unanimity were to be required on the bench the future determination of law would be most dubious.

This wide and frequent disagreement in our courts is sometimes sought to be explained by the previous training of our judges in different States where differing principles prevail, but if this be true it seems then reasonable that the same result should be expected in the case of our jurymen. It is not to be presumed that a body of men taken from various employments and stations in life should unanimously agree upon any point as to which there might be any opportunity for a difference of opinion, and the consequence of the rule of unanimity is either to often leave the issue undecided or to force its decision by means of perjured ballots. The gravity of both of these alternatives is apparent.

It is said by some that the moral effect of a verdict will be weakened by a dissenting vote and that a loss of unanimity will mean a loss of discussion. It might be suggested, however, in reply that the defeated litigant will never be satisfied and that the loss of moral force in the verdict, if the means by which unanimous verdicts are obtained are rightly understood, will hardly be appreciable, should any in fact ensue. But in order to insure discussion a certain time might be prescribed before which nothing but a unanimous verdict would be received and after which a majority of four or six would prevail. Indeed, if the opinions of the jurors should be formed only upon that evidence which has been produced in court it might be asked with apparent reason whether those opinions should not also in the main be formed before leaving the jury box, uninfluenced by the persuasiveness or eloquence of a fellow juror. The value of jury

trial seems to be enhanced by the safety in numbers but the safety in numbers is dependent upon preserving the individuality of the jurymen.

In criminal cases, on the other hand, especially those involving capital punishment, the circumstances are open to a different construction and it seems to be generally agreed that the apparent popular aversion to the taking of life requires, at least for the present, a unanimous verdict. This, however, would only be recognizing the rule of evidence which in criminal cases requires the proof of guilt to be beyond a reasonable doubt, but in civil suits allows the verdict to follow the preponderance of evidence. The Act of the Legislature of Utah, although held to be unconstitutional, is interesting as evidence of the tendency and desire to break away from the old common law rule of unanimity and to make an adaptation to present needs and conditions which in the eyes of some seems most necessary if the jury system is to be maintained.

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THE recommendation of a new course in a law school already abundantly supplied is not to be made in a thoughtless moment and yet the ease with which much good might be accomplished persuades us to offer a suggestion as to a possible addition to the curriculum of this as well as other law schools where such a course as we have in mind has not been instituted. The average apprentice in the study of the law is as ignorant of the tools with which he is to work as is the beginner in other arts, and yet a practical acquaintance with the tools of his profession is almost as important, although not so difficult to obtain, as the theories which should control their use. Next to a knowledge of the law, therefore, we would place a knowledge of the means by which to discover what the law may be, and to obtain that a few hints as to the best use of law libraries and law books would be of the greatest value. The use of the various digests and encyclopedias, the method of tracing a case from its inception to its final determination, and the best manner of collating and verifying authorities is surely of sufficient importance and interest to warrant some practical suggestions early in a course of law instruction. A few lectures on Library Procedure might with advantage be added to the curriculum of a law school.

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WITH this number the YALE LAW JOURNAL completes its sixth volume and passes into the care of other editors. The past

year has seen a slight enlargement in the size of the magazine and a slight increase in the number of contributions; the future should see a still stronger growth and development. The three years' course in the School will offer opportunity for a much-needed connecting link between succeeding editorial boards and give the benefit of some experience to those who will assume control. The thanks of the Board are due to Prof. E. G. Buckland and Dr. W. Frederic Foster for so kindly serving upon the committee to judge the competitive essays submitted by the Junior candidates for editorial positions on the JOURNAL. For the kindness of those who have contributed to the JOURNAL or otherwise aided in making this volume possible the present editors express their sincere appreciation; for those who are to succeed us we wish an experience as pleasant as ours has been and the success which should result from their efforts.

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THE editorial board of the YALE LAW JOURNAL for the ensuing year will be composed as follows: Charles Frederic Clemons, Chairman; Edward William Beattie, Jr., Secretary and Treasurer; William Ansel Arnold, William Bradford Boardman, Frederick Stephen Jackson, Addison Strong Pratt, Ernest Clyde Simpson and Harrison Graw Wagner.

In the competition for the JOURNAL Essay the successfnl essay was written by Charles Frederic Clemons.